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PROPERTY AND SPECIAL TAXES DEPARTMENT  
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December 13, 2005

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2005-8 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, January 13, 2006**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, they will be printed in Volume 3 of the Property Taxes Law Guide. At that time, the CLD becomes obsolete.

Copies of the backup correspondence are available by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2005-8

December 13, 2005

### 220.0000 CHANGE IN OWNERSHIP

220.0165 Easement. Under Revenue and Taxation Code section 65.1, a change in ownership in common areas occurs provided that the interests transferred meet the definition of a change in ownership and those areas are an appurtenance to other real property. A parking lot easement that is nonexclusive is not reserved as an appurtenance to a building pad site in a shopping mall as required by section 65.1(b). Since such easement rights are nonexclusive, they are not substantially equal to the value of the fee interest and do not result in a change in ownership. Even though the agreement provides that the company may obtain an exclusive right to those parking areas if certain provisions are met, that interest is merely contingent and does not represent a present interest in real property. C 7/19/2005.

### 610.0000 NEWLY CONSTRUCTED PROPERTY

610.0115 Valuation. A taxpayer purchased a vacant residential lot and had a home constructed by a licensed general contractor. None of the construction was done by the taxpayer. Upon completion of construction, the assessor properly considered two methods, the replacement cost and the comparable sales approaches, to estimate the fair market value of the new construction. The costs of construction may not equal the fair market value of a new residence. Therefore, county assessors should employ the valuation approach(es) that best estimates the value of new construction, not merely its cost. C 7/11/2005.

### 660.0000 POSSESSORY INTEREST

660.0034 Cable Television Franchise Fee. Section 107.7 does not require that the assessor use a portion of the franchise fee as the estimated economic rent for a cable system taxable possessory interest. Subdivision (b)(2) provides that the annual rent must be either (1) that portion of the franchise fee received by the franchising authority that is determined to be payment for the cable television possessory interest or (2) the appropriate economic rent. If the assessor does not use a portion of the franchise fee as the economic rent, the resulting assessment does not benefit from any presumption of correctness.

Other than that provided in section 107.7, there is no legal connection between the franchise fee and the economic rent for a cable system taxable possessory interest. The federal limit on cable television franchise fees does not establish a limit on the economic rent of a cable system taxable possessory interest. Similarly, neither does the state limit on such fees establish a limit on the economic rent.

In addition, a cable television franchise fee is not an enforceable land use restriction under section 402.1. Section 402.1(a) requires an assessor to consider the effect upon value of any enforceable restriction to which the use of the land may be

subjected. The federal and state limits on cable television franchise fees are limits upon amounts which may be charged for cable television franchises, not restrictions to which uses of lands are subjected. C 7/13/2005.

#### **880.0000 WELFARE EXEMPTION**

880.0147 **Limited Liability Company.** A limited liability company has two basic organizational documents: an operating agreement and the articles of organization (a statutorily-prescribed Secretary of State form). A limited liability company comes into existence when its articles of organization are filed with the Secretary of State. Corporations Code section 17051(c) authorizes the inclusion of optional matters in the articles that directly relate to Property Tax Rule 136 requirements.

To qualify for exemption, claimants that filed the articles of organization prior to the effective date of Rule 136 and the statutory amendments to Revenue and Taxation Code section 214 must amend their articles of organization if the articles do not include the requirements of Rule 136. C 7/12/2005.